Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States

ANGELA PEREZ, ET AL.,

Petitioners,
v.

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY KANSAS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

DANIEL J. COHEN
Counsel of Record
LAKIN LAW FIRM
300 Evans Avenue
Wood River, Illinois 62095
(618) 254-1127

Attorneys for Petitioners

QUESTIONS PRESENTED

1. Whether this Court's decision in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), requiring the bright-line application of a purpose-to-cause-harm standard in the limited context of cases under 42 U.S.C. §1983 involving high-speed police pursuits, should be extended to all emergency vehicle response cases brought under 42 U.S.C. §1983, without regard to whether the government official had an opportunity to deliberate upon his conduct before engaging in his challenged course of action.

2. Whether the court of appeals erred in holding, in apparent *dictum*, that as a matter of law, the individual government defendant did not have an opportunity to deliberate upon his conduct before engaging in his challenged course of action, where the evidence permitted a reasonable conclusion to the contrary, and where the defendant himself made admissions to the contrary.

PARTIES TO THE PROCEEDINGS

Petitioners are Angela Perez, next friend of Sabrina Becerra, a minor, natural dependent daughter and legal heir of Aaron M. Becerra, deceased, and Hector Becerra, Personal Representative and Administrator of the Estate of Aaron M. Becerra, deceased.

Respondents are the Unified Government of Wyandotte County/Kansas City, Kansas, and its fire department employee, Anthony M. Mots.

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I. THE COURT OF APPEALS DECISION VIOLATES THE HOLDING OF, OR AT LEAST THE GUIDING PRINCIPLES UNDERLYING, THIS COURT'S DECISION IN *COUNTY OF SACRAMENTO V. LEWIS*, AND IMPROPERLY RESOLVES TRIABLE ISSUES OF FACT AS A MATTER OF LAW, AND THEREBY REACHES AN ERRONEOUS RESULT 9

II. THIS COURT SHOULD REMEDY THE ERRONEOUS TREND AMONG THE CIRCUITS THAT IMPROPERLY APPLIES THE PURPOSE-TO-CAUSE-HARM STANDARD ENUNCIATED IN *COUNTY OF SACRAMENTO V. LEWIS* TO EMERGENCY VEHICLE RESPONSE CASES UNDER 42 U.S.C. §1983 THAT DO NOT INVOLVE HIGH-SPEED POLICE PURSUITS, AND IN WHICH THERE IS AN OPPORTUNITY FOR ACTUAL DELIBERATION, AND SHOULD RESOLVE A SPLIT AMONG THE

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III. THE ERRONEOUS REASONING AND CONCLUSION OF THE COURT OF APPEALS IN THE CASE AT BAR, AND THE CONFLICT AMONG THE CIRCUITS ON THE PROPER CONSTRUCTION OF THIS COURT'S DECISION IN *COUNTY OF SACRAMENTO V. LEWIS*, WARRANTS REVIEW IN THIS COURT BY WRIT OF CERTIORIARI 21

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The opinion of the court of appeals, reversing the decision of the district court and ordering dismissal of petitioners' due process claims asserted under 42 U.S.C. §1983, is reported as *Perez v. Unified Government of Wyandotte County/Kansas City, Kansas*, 432 F.3d 1163 (10th Cir. 2005), and is reproduced in the Appendix at App. 1.

The decision of the district court, denying respondents' motion for summary judgment on petitioners' due process claims, is reported as *Becerra ex rel. Perez v. Unified Government of Wyandotte County/Kansas City, Kansas, et al.*, 342 F.Supp.2d 974 (D.Kan. 2004), and is reproduced in the Appendix at App. 13.

The order of the court of appeals denying rehearing is unreported, and is reproduced in the Appendix at App. 57.

JURISDICTION

The court of appeals opinion was entered on December 27, 2005. A timely petition for rehearing was denied on January 24, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

RELEVANT PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides, in pertinent part: "No person shall be ... deprived of life, liberty, or property, without due process, of law."

2. The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

3. 42 U.S.C. §1983 provides, in pertinent part: "Every person who, under color of any statute [or] ... custom, ... of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law[.]"

STATEMENT OF THE CASE

On September 30, 2000, a fire rig operated by respondent Anthony Mots (defendant/appellant in the courts below) entered the intersection of Central Avenue and 18th Street in Kansas City, Kansas, striking the driver's side of an automobile operated by petitioners' decedent, Aaron Becerra. Mots entered the intersection on westbound Central against the longstanding red light. The decedent entered on southbound 18th Street with a green light. The collision killed the decedent. The emergency alarm was a false call – "No fire. It was just an unfounded call".

Mots would have been able to see the red light governing his direction of travel at the subject intersection from four blocks away. Mots admitted that, from the time he began responding to the call at the fire station through to the time of the collision, he had time to deliberate upon his chosen actions, and actually deliberated on those actions. Specifically, Mots admitted that he knew where he was going and how he was going to get there; that he had the ability to control his speed, and to decide upon a speed that he felt was appropriate at any given time, and to ensure that he had time to react; that his operation of the rig was part of a thought-out course reflecting the decisions that he made; that he had an adequate opportunity to appraise the intersection at 18th Street, including the traffic and traffic lights, and to decide how he was going to handle the intersection; and that the way in which he attempted to handle the intersection was in accordance with the decisions that he had made.

The intersection met all of the factors that can affect the concern and consideration that an emergency

operator should give to traversing an intersection, in that it is a five-way intersection, relatively busy and congested, and blanketed on the northeast corner with buildings. The fact that it is a five-way intersection creates an increased risk of confusion that might lead to mishap. The fact that it is a relatively busy and congested intersection creates a heightened risk of mishap for an emergency vehicle entering and passing through it. The buildings potentially blanket and/or ricochet the sirens and horns of an emergency vehicle, and can also blanket or block line of sight to the lights of the emergency vehicle, so that other motorists may not be aware of the presence of the emergency vehicle. If an emergency vehicle is passing through that intersection against a red light, there is a potential for an increased risk of mishap.

Unified Government ("UG") driver-training materials admonish that hazardous intersections should be avoided, and that the most direct route to a call may not be appropriate. Nevertheless, even assuming these features existed at the subject intersection and made it more dangerous than another intersection would have been, Mots said that he would proceed through it anyway, and that he is not going to change his route to avoid an intersection that he feels is more hazardous. To the contrary, regardless of his training, Mots always travels the most direct route.

The UG's training materials also repeatedly admonish that a driver/operator must come to a complete stop before entering a negative right-of-way intersection. Mots agreed that, coming to a red light, he would be more apt to come to a complete stop and make sure that the intersection is clear in all directions because "basically, the other cars have the green light". More than

likely, yes, he would always, definitely, come to a complete stop at an intersection if it were showing him a red.

Nevertheless, as Mots approached and entered the intersection, even though he had a red light, he did not stop. Rather, as Mots approached the intersection, he slowed the rig from approximately 40 miles per hour to no less than 30 miles per hour, and then, approximately 3-4 car lengths back, "hit his accelerator", "barreling at full force". Plaintiffs' accident reconstruction expert, James Loumiet, calculated the speed of the rig at the time of impact to be 23-24 miles per hour. The Kansas Highway Patrol reached a similar forensic conclusion that the impact speed of the rig was between 21 and 26 miles per hour.

Mots himself testified that he would never enter an intersection in a 30-mile-an-hour zone, against a red light, and travel through it at 23-24 miles per hour, because it could present a very high risk of a collision, and he would not want to take that chance. At the same time, Mots could not state, or even approximate, the speed of the rig at any point from the station through to the point of impact.

UG training materials provide that, in situations where all lanes of traffic in the same direction as the responding apparatus are blocked, the driver/operator should move the apparatus into the opposing lane of traffic and proceed through the intersection at an extremely reduced speed. As he approached the intersection, Mots moved his rig from the westbound lane of traffic on Central into the eastbound lane of oncoming traffic, and entered the intersection from that lane.